

Discussion Report

by

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The final discussion focused on the presentations by *James D. Cox* and *Randall S. Thomas*. *Arad Reisberg* from London opened the discussion by addressing the issue of class actions. *Cox* and *Thomas*, who examined a sample of 53 settlements of institutionally filed claims, had made clear in their presentations that class actions are less desirable due to high agency costs. Investors only use the threat of the class action to obtain coerced settlements. *Reisberg* therefore questioned whether a government agency should participate in a class action as is the case according to Israeli law. Earlier, in his presentation, *Reisberg* had explained that the Israeli Financial Market Authority can join in a class action if it deems it to be in the public's best interest. Furthermore, *Reisberg* suggested that there was a lack of public enforcement and so questioned whether this was a result of underfunding of the SEC. Both *Thomas* and *Cox* replied. According to *Thomas*, notwithstanding that, like most government bodies, the SEC could benefit from more funding, the SEC remains an efficient and effective agency working well to enforce law. *Thomas* asserted that the threat of securities fraud class actions serves as a deterrent to persons considering committing fraudulent acts. Furthermore, the Private Securities Litigation Reform Act (PSLRA) contains a lead plaintiff provision ensuring that a class representative has a substantial financial interest in the case; it is particularly designed to induce public pension funds to participate in this capacity. Still, few institutional investors are willing to appear as a lead plaintiff. Generally, institutional investors do so only, in cases with higher provable losses and with larger defendant companies. *Cox* concluded the discussion by adding that the access to liability is mainly a political issue, noting that in 1985 class action reform was halted due to political opposition. Today more than ever we need to re-examine the issue of liability of accounting firms and underwriters, as well as of directors.

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